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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 144

JOHN SEIFING

Petitioner,

vs.

BARCLAY WHITE COMPANY, A CORPORATION, UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, COMMONWEALTH OF PENNSYLVANIA, AND GENERAL BUILDING CONTRACTORS ASSOCIATION,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

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INDEX

Subject Index

	Page
Petition for writ of certiorari	1
I. Summary statement of the matter involved	2
(a) Opinions below	2
(b) Jurisdiction	2
(c) The question presented	2
(d) The statutes involved	2
(e) Statement of facts	4
II. Reasons relied on for allowance of writ	8
Brief in support of petition	13
I. Outline of argument	13
II. Argument	13
III. Conclusion	16

Citations

Cases:

Bigger v. *Unemployment Comp. Comm.*, 46 Atl. (2d) 137 (Del. Super. 1946)	6
Morrison v. *California*, 291 U. S. 82 (1934)	16
Speer v. *Industrial Commission* (Fla. Super Ct.) (1945), C. C. H. Unem. Ins. Serv. (Fla.), Par. 13,521	
Steward Machine Co. v. *Davis*, 301 U. S. 548 (1937)	13
Unemployment Comp. Comm. v. *Aragon*, 329 U. S. 143, 91 L. Ed. 143 (1946)	7, 8, 15

Statutes:

Judicial Code, Sec. 237(b) as amended by Act of February 13, 1925	2
Social Security Act of 1935, Tit. IX, 903(A)(5), (B) and (C), 49 Stat. 640; Internal Revenue Code, 26 USCA, Sec. 1603(a)(5) (B) and (C)	2, 3, 7
26 Alabama Code Ann. Sec. 214 E(2)(b) and(c)	12
56 Arizona Code Ann. Sec. 1005(c)(2) and (3)	12
Arkansas Stat. (1937), Sec. 8553(c)	13

Page

California Laws (1935), c. 352, Sec. 13(b)(2) and (3) as amended 13
167 A Colorado Stat. Ann. Sec. 5(c)(2)(b) and (c) .. 13
Connecticut Gen. Stat. (1939 Supp.), Sec. 1339e(b)(1)(B) and (C) 13
Delaware Laws (1947), (S. 78) Sec. 5(c)(1)(A) and (D) 13
Florida Stat. Ann. Sec. 443.06 (2)(b) 2 and 3 13
Georgia Code Ann., c. 54—610(c)(2)(B) and (C) ... 13
Idaho Code Ann. Sec. 43—2409(d)(2) and (3) 13
Illinois Stat. Ann. c. 45.134(c)(2) 13
Indiana Laws (1947), Sec. 1502(b) 13
Iowa Code (1946), Sec. 96.5—3b(2) and (3) 13
Kansas Gen. Stat. Ann. c. 44—706(c) 13
Kentucky Rev. Stat. Ann. Sec. 341.100 (2)(b) and (c) 13
Louisiana Gen. Stat. Ann. Sec. 4434.4(c)(2)(b) and (c) 13
Maine Rev. Stat. (1944), c. 24, Sec. 5(c)(2)(b) and (c) 13
Maryland Code Ann.—Art. 95A, Sec. 5(d)(2)(b) and (c) 13
Massachusetts Ann. Laws, c. 151A, Sec. 25(c)(2) and (3) 13
Michigan Stat. Ann. Sec. 17.531(b) 13
Minnesota Stat. Ann. Sec. 268.09(5)(b)(2) and (3) .. 13
Mississippi Code (1942), Sec. 7379(d)(2) (B) and (C) as amended 13
Missouri Rev. Stat. Ann. Sec. 9431 I(c)(2) (B) and (C) 13
Montana Rev. Code Ann. Sec. 3033.8(c)(2)(b) and (c) 13
Nebraska Rev. Stat. Sec. 48—628(c)(2)(ii) (iii) ... 13
Nevada Comp. Laws Ann. (1931-1941 Supp.), Sec. 2825.05(c)(2)(b) and (c) 13
New Hampshire Revised Laws (1942), c. 218, Sec. 4(C) (2)(b) and (c) 14
43 New Jersey Stat. Ann., Sec. 21—5(c)(2)(b) and (c) 14

Page

New Mexico Stat. Ann. Sec. 57—805(c)(2)(b) and (c) 14
New York Stat. Ann. (McKinney), Labor Law, Sec. 593—2(a) and (d) 14
North Carolina Gen. Stat., Sec. 96—14(c)(2)(b) and (c) 14
North Dakota Revised Code (1943), c. 52.0636—2 and 3 14
Ohio Gen. Code Ann., 1345—6e(1) and (4) 14
40 Oklahoma Stat. Ann., Sec. 215(c)(2)(B) and (C) 14
Oregon Comp. Laws Ann., Sec. 126—705(c)2 (a)(B) and (C) 14

Pennsylvania:

Pa. Laws, 1943, No. 157, p. 337-338 3
Pa. Laws, 1943, No. 312, p. 727 3
43 Pa. Stat. Ann. (Purdon) (1946 Pocket Parts), Sec. 753(t) 4
43 Pa. Stat. Ann. (Purdon) (1946 Pocket Parts), Sec. 802(a) 3

Rhode Island General Laws (1938), c. 284, Sec. 7(8)(b) and (c) 14
South Carolina Code of Laws (1942), Sec. 7035—85(c)(2)(B) and (C) 14
South Dakota Code (1939), c. 17.0830 (3(b)(2) and (3) 14
Tennessee Laws (1947,) c. 29, Sec. 5 D(2) b and c 14
Texas Civ. Stat. Ann. Art. 5221b-3(c)(2)(b) and (c) 14
Utah Code Ann. (1943), Tit. 42-2a-5(c)(2)(B) and (C) 14
Vermont Laws (1937), Public Act No. 1, Special Session, December 1936, Sec. 5(c)(2) II and III 14
Virginia Code Ann. (1942), Sec. 1887 (97)(c)(2)(b) and (c) 14
Washington Sess. Laws (1945), c. 35, § 79, pp. 116-117 14

Page

West Virginia Code Ann. (1943), Sec. 2366(80)(2) and (3) 14
Wisconsin Code (1945), c. 108.04 (9)(b) and (c) 14
Wyoming Comp. Stat. Ann. (1945), Sec. 54—105 A II(b)(ii) and (iii) 14

Unemployment Board and Referee Decisions:

Alabama Appeals Tribunal, Decision 1248 9
Arkansas Board of Review Decision No. 240 9
California Appeals Board Benefit Decision No. 1001-3494 9
Colorado Referee Decision. DD-848-43 9
Georgia Appeal Tribunal Decision 9
Illinois Board of Review Decision No. 44-BRRD-499 9
Indiana No. 45-R-49 9
Kansas Appeal Tribunal, Appeal No. 804 ..... 9, 10
Kansas Appeals Referee's Decision No. 1258 10
Massachusetts Review Examiner Decision, No. 9204-RE 10
Michigan Referee Decision No. B 4-117 10
Mississippi Review Board Decision No. BR-33-43 10
Nebraska Appeal Tribunal Decision No. 117 10
New York Appeal Board Case No. 10,645-44 10
North Carolina Unem. Comp. Comm. Decision No. 478 10
Oklahoma Board of Review Decision No. 712 10
Tennessee Appeal Tribunal Decision No. 41-AT-351 11
Utah Appeals Referee Decision No. 44-A-236 10
Virginia Unem. Comp. Comm., Decision No. D-888, M. S.-249 11
Washington Appeals Examiner Decision No. 9853 10

Miscellaneous:

Rule 38, par. 5 of the Supreme Court 9
12 Federal Register 90, 91 (January 4, 1947) 7
3 Federal Register 11 (January 4, 1938) 7
3 Federal Register 48 (January 8, 1938) 7
Menard, Refusal of Suitable Work (1945), 55 Yale L. J. 134, 142, 144 9

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, John Seifing, respectfully petitions this Honorable Court for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania

I. Summary Statement of the Matter Involved

(a) Opinions Below

The opinion of the Supreme Court of Pennsylvania and the dissenting opinion (R. 102-110) is reported at 356 Pa. 43, 50 Atl. (2d) 336 (1947).

(b) Jurisdiction

The judgment of the Supreme Court of Pennsylvania was entered on January 6, 1947 (R. 102). A petition for re-argument was thereupon filed by petitioner (R. 110-115), which was denied by the Supreme Court of Pennsylvania on March 24, 1947 (R. 69). The opinion of the Supreme Court is reported in 356 Pa. 43, 50 Atl. (2d) 336 (1947). The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

(c) The Question Presented

Does a State act in violation of Section 903 (a) (5) (B) and (C) of the Social Security Act of 1935, if the State, pursuant to a state statute passed in conformity with the Social Security Act, denies unemployment compensation to an otherwise eligible individual solely because the individual, a member of a labor union for more than 30 years, was offered and refused to accept a job he was capable of doing but had never done, the acceptance of which job, located in another city, paying below the union scale of wages, and operated under open-shop conditions, would have required his giving up his membership in his labor union?

(d) The Statutes Involved

Social Security Act of 1935, Tit. IX, Section 903(a)(5) (B) and (C), 49 Stat. 640; Internal Revenue Code, 26 USCA Sec. 1603 (a) (5) (B) and (C).

26 USCA Sec. 1603. "Approval of state laws

"(a) Requirements. The Social Security Board shall approve any State law submitted to it, within thirty days of such submission, which it finds provides that—

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: . . .

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;"

Pa. Laws, 1943 No. 157, p. 337-338.

"Sec. 402. Ineligibility for Compensation. An employe shall be ineligible for compensation or waiting period credit for any week——

(a) In which his unemployment is due to failure, without good cause, either to apply for suitable work at such time and in such manner as the department may prescribe or to accept suitable work when offered to him by the employment office or by his previous employer. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training and experience, and the distance of the available work from his residence."

This provision as amended in immaterial respects is found in 43 Pa. Stat. Ann. (Purdon, 1946 Pocket part) § 802 (a).

Pa. Laws, 1943, No. 312, pp. 718, 727.

"§ 4. Definitions. The following words and phrases, as

used in this act, shall have the following meanings unless the context clearly requires otherwise. . . .

"(r) 'Suitable Work' means all work which the employe is capable of performing, except work in which—(1) the position offered is vacant, due directly to a strike, lockout, or other labor dispute, or (2) the remuneration, hours or other conditions of the work offered are substantially less favorable to the employe than those prevailing for similar work in the locality, or (3) as a condition of being employed, the employe would be required to join a company union, or to resign from, or refrain from joining, any bona fide labor organization."

This provision as amended in immaterial respects is found in 43 Pa. Stat. Ann. (Purdon, 1946 Pocket part) § 753 (t).

(e) Statement of Facts

The Unemployment Compensation Board of Review, and the Superior and Supreme Courts found, and the record discloses, the following facts:

The Petitioner is a carpenter (R. 19, 22, 23, 29), who lives in the city of Philadelphia (R. 28). He is and has been for over 30 years a member of the United Brotherhood of Carpenters (R. 20) a labor union affiliated with the American Federation of Labor. As such member, petitioner is entitled to old age and death benefits (R. 21).

For five weeks ending January 21, 1944, petitioner was employed in Philadelphia by the respondent, Barclay White Company, as a carpenter (R. 19). He was paid a wage scale of $1.58 an hour established by his union (R. 20, 22). Thereupon he was laid off (R. 20). He then registered for work with the United States Employment Service and, subject to two waiting weeks, filed claims for unemployment compensation pursuant to the Unemployment Compensa-

tion Law of Pennsylvania for the week ending February 20, 1944, and for the three weeks following (R. 21).

On February 21, 1944, petitioner was referred by the Employment Service to the Sun Ship Company in the city of Chester, Pa., for employment as a ship's carpenter (R. 21, 25). Petitioner had never worked as a ship's carpenter (R. 23), nor had he ever worked in Chester (R. 28). The job offered petitioner paid from $1.01½ to $1.20 per hour. The Sun Ship Company operated an open-shop plant and men not members of the carpenters' union worked there. The carpenters' union had a closed shop in Philadelphia (R. 22, 23).

Under the rules of the carpenters' union if a member accepts a job at less than the union rate or if he works at a job where carpenters not members of the union are employed, he is subject to fine, suspension, or expulsion (R. 24, 60-62). If the petitioner had accepted the job offered him he would have been suspended or compelled to resign his membership in the union and would have lost his accumulated benefits (R. 24, 60-62).

Petitioner refused the position offered (R. 21). The Bureau of Unemployment Compensation thereupon denied him compensation for the three weeks beyond February 20, 1944 on the ground he had refused to accept suitable work as defined in the Pennsylvania Statute (R. 13-14). Petitioner thereupon appealed to the Unemployment Compensation Board of Review (R. 14).

A referee's hearing was held at which the facts already recited were adduced. The only evidence introduced at the hearing bearing on the relation of the wages, hours, or other conditions of the work offered to "those prevailing for similar work in the locality" was a statement of the Local Appeal Clerk and of a Junior Interviewer. The Appeal Clerk testified that "the distance was normal and

this was the prevailing rate for the type of work being offered" (R. 21); this statement, however, was made solely on the recommendation of the Junior Interviewer (R. 24). The Junior Interviewer testified:

"I also told him [petitioner] if he did not take the job, which we considered suitable work, especially this being in an emergency, and Chester isn't too far, it is only twenty minutes from 16th and Filbert, Pennsylvania Suburban Station, it would affect his compensation, and also that Chester could not supply enough workers for the shipyard and that they had to come to Philadelphia for a good many workers. As a matter of fact I don't think it takes any longer to go to Chester as to the Navy Yard" (R. 22).

He also stated that the work was "suitable work" in his opinion (R. 22) and that the job offered petitioner was "carpenter job, listed as ship carpenter, which, however, we considered suitable work for carpenters . . ." (R. 25). He admitted, however, that he did not know how many squares it was from the train at Chester to the Sun Ship (R. 28).

Thereupon the referee affirmed the decision of the bureau on the ground that petitioner refused a referral to suitable work without good cause (R. 31-36).

Petitioner then appealed to the Board of Review of the Unemployment Compensation Board (R. 38-39). The Board of Review reversed the referee, found for petitioner and ordered compensation for the three weeks in question (R. 46-48, 49-55). Respondent, Barclay White Company, thereupon appealed to the Superior Court of Pennsylvania (R. 1-8). That court, two judges dissenting, affirmed the decision of the Board of Review. The opinion of the Superior Court and the dissent appears in 159 Pa. Super. 94, 46 Atl. (2d) 598 (1946) and is set forth in the record (R. 139-154). Respondent, Barclay White Company, then appealed to the Supreme Court of Pennsylvania which, one judge dissent-

ing, reversed the decision of the Superior Court, holding that petitioner was not entitled to unemployment compensation for the three weeks in question. On March 24, 1947, the Supreme Court of Pennsylvania denied rehearing (R. 69).

The Pennsylvania Unemployment Compensation Act, concededly passed to conform to the standards of Section 903 of the Federal Social Security Act, 26 USC § 1603, has, ever since its passage been certified by the Social Security Board as required by Section 903 (c) of the Social Security Act, 26 USC § 1603 (c).

See, e.g., 3 Fed. Reg. 11 (Jan. 4, 1938), 48 (Jan. 8, 1938) (certification for taxable year 1937).

See, e.g., 12 Fed. Reg. 90-91 (Jan. 4, 1947) (certification for taxable year 1946).

Cf. *Unemployment Comp. Comm.* v. *Aragon*, 329 U. S. 143, 150, 91 L. Ed. 143, 147 (1946) ("The Social Security Act of 1935 requires that the state or territorial law contain a provision to this effect before the legislation can be approved by the Social Security Board").

The standards of Section 903 (a)(5)(B) and (C) of the Social Security Act are incorporated verbatim in the definition of "suitable work" in the Pennsylvania Act with the result that work which falls within the interdiction of Section 903 (a)(5)(B) and (C) is excluded from the definition "suitable work." The federal question here involved is thus composed of two parts: first, was petitioner offered "suitable work" within the meaning of the Pennsylvania statute and, second, was it understood that the interpretation of the phrase "suitable work" is governed at least as to minimum standards by Section 903 (a)(5)(B) and (C) of the Social Security Act.

The issue as to whether petitioner was offered "suitable

work" was raised throughout the proceedings; decided in the first instance by the Bureau of Unemployment Compensation in the affirmative (R. 13-14); raised by petitioner on appeal to the Board of Review (R. 14); decided adversely to petitioner by a Referee of the Board (R. 31-36); raised by petitioner on further appeal to the Board of Review (R. 38-39); found in his favor by the Board (R. 46-48, 49-55); and, though the record discloses no further action on the part of petitioners or respondents specifically raising the issue before the Superior and Supreme Courts of Pennsylvania, argued before and directly passed on by both the Superior (R. 90, 159 Pa. Super. 94, 96) and Supreme Courts (R. 104, 356 Pa. 43, 47). The issue as to whether petitioner was denied compensation for refusing to accept work offered which violated the standards of Section 903 (a)(5)(B) and (C) of the Social Security Act; i.e., was not suitable work for that reason, is not directly referred to in the record up to the time the proceedings reached the Supreme Court of Pennsylvania. Petitioner, in order to have the record adequately show that the controlling nature of the Social Security Act had been duly recognized and passed upon, requested (R. 131-133) and obtained from the Supreme Court of Pennsylvania a certificate showing that the federal question: namely, whether petitioner had been offered suitable work within the meaning of Section 903(a)(5)(B) and (C) of the Social Security Act, had been argued before and necessarily decided by that court (R. 143-145).

II. Reasons Relied On for Allowance of Writ

A federal question of substance presents itself with regard to the meaning of the standards set up in Sec. 903 (a) (5) (B) and (C) of the Social Security Act. Cf. *Unemployment Comp. Comm.* v. *Aragon*, 329 U. S. 143, 145,

91 L. Ed. 143, 145 (1946). This question is of fundamental importance in the interpretation of the Act involving as it does the meaning of such crucial words as "other conditions of work," "similar work," "locality," "condition of being employed," and "resign from . . . any bona fide labor organization." This question has not been heretofore determined by this Court. (Supreme Court Rule 38, par. 5(a)). It is a question which, insofar as clause (B) is concerned, good authority indicates has been wrongly decided.

See Menard, Refusal of Suitable Work (1945) 55 Yale L. J. 134, 142, 144.

It is also a question on which, insofar as clause (C) is concerned, the states are widely divided and their opinions have varied, as some of the decisions cited below show.

Allowing Compensation

Alabama—(Appeals Tribunals' Decision 1248, Feb. 26, 1943).

Arkansas—(Board of Review Decision No. 240—BR, Jan. 21, 1946).

California—(Appeals Board Benefit Decision No. 1001 3494, October 11, 1944 as reported in C. C. H. Unemployment Insurance Law, California Par. 8479.-02

Illinois—(Board of Review Decision No. 44—BRD—499, August 10, 1944, 8 Benefit Series, No. 1, p. 39.*

Kansas—(Matter of Phillips,), Appeal Tribunal,

Disallowing Compensation

Colorado—(Department of Employment Security, Raymond O. Hope, Senior Claims Deputy v. Fred Restaw and E. Myer Rifkin, Referee. (DD—848-43) unreported).

Delaware—(Bigger v. Unemployment Comp. Com., 46 Atl. (2d) 137 (Super., 1946).

Florida—(Speer v. Industrial Commission, Super. Ct., 1945, C. C. H. Unem. Ins. Serv. (Fla.) Par. 13, 521, "*semble*")

Georgia—(McAllister v. Industrial Electrical Co., Appeal Tribunal. May 25, 1944. 7 Benefit Series

* Published monthly by Social Security Board.

Allowing Compensation (Cont'd.)

Appeal No. 804, Apr. 14, 1943).

Massachusetts — (Decision of Review Examiner, No. 9204—RE, April 10, 1944. 7 Benefit Series, No. 8, page 71.)

Michigan — (Referee decision No. B4-117, March 17, 1944. 8 Benefit Series 9 506—Mich.—A; Appeal Board Decision No. B4-3535-RM-2622, February 8, 1946. 9 Benefit Series 10735.)

Mississippi—(Board of Review Decision No. BR-33-43, April 17, 1943.)

Nebraska—(Appeal Tribunal's Decision Docket No. 117, January 31, 1942.)

New York—(Appeals Board Case No. 10,645-44, July 24, 1944, 7 Benefit Series No. 1, p. 103.)

North Carolina — (Unemployment Comp. Comm., Decision No. 478, June 18, 1943, 6 Benefit Series No. 12, p. 135.)

Oklahoma—(Board of Review Decision, Docket No. 712, OAT Docket No. 5071, No. 53-AT-45, September 17, 1945, 8 Benefit Series No. 12, page 132.)

Disallowing Compensation (Cont'd.)

#11, p. 43.*)

Indiana—No. 45—R—49, 9 Benefit Series, No. 3, Oct. 17, 1945.

Kansas — (Appeals Referee's Decision No. 1258, Nov. 22, 1944).

Oregon—(Appeals Referee decision, No. 43-RA-11, August 12, 1943, 7 Benefit Series No. 2 p. 112).

Utah—(Appeals Referee Decision, No. 44-A-236, May 22, 1944, 8 Benefit Series No. 1, p. 137).

Washington—(Appeals Examiner, No. 9853, May 14, 1945. 8 Benefit Series No. 9, p. 204).

Allowing Compensation (Cont'd.)	*Disallowing Compensation (Cont'd.)*
Tennessee—(Appeal Tribunal Decision No. 41-AT-351, December 10, 1941).	
Virginia — (Unemployment Comp. Comm. Decision No. D-888, M. S.-249, October 15, 1943).	

Finally, it is a question which this court ultimately will have to determine.

WHEREFORE, petitioner prays that this court may issue its writ of *certiorari* to review the decision of the court below.

JOHN SEIFING,
By FRANK B. MURDOCH,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION

I. Outline of Argument

This argument is confined to the propriety of granting the present writ of *certiorari* and is based upon the points above set forth under the heading Reasons Relied on for Allowance of Writ.

II. Argument

In *Steward Machine Co.* v. *Davis,* 301 U. S. 548 (1937), this Court in upholding the constitutionality of the Federal Social Security Act had occasion to pass on the purpose and meaning of Section 903 of the Act. In that case the court said of the requirements of the Section (at p. 593):

> "A credit to taxpayers for payments made to a State under a state unemployment law will be manifestly futile in the absence of some assurance that the law leading to the credit is in truth what it professes to be. An unemployment law passed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more. What is basic and essential may be assured by suitable conditions. The terms embodied in these sections are directed to that end."

The only standards set up by the Act relating to the minimum conditions of work an unemployed individual may be compelled to accept on penalty of losing his compensation are found in Section 903 (a) (5) of the Act. All the states have enacted laws in harmony with the Act. These laws, including the Pennsylvania law, here applied, all incorporate the standards set forth in Section 903 (a) (5) of the Act.

26 Alabama Code Ann. Sec. 214 E (2) (b) and (c).

56 Arizona Code Ann. Sec. 1005 (c)((2) and (3).

Arkansas Stat. (1937) Sec. 8553(c). . . . California Laws (1935) c. 352, Sec. 13(b(2) and (3) as amended. . . .

167 A Colorado Stat. Ann. Sec. 5 (c) (2) (b) and (c).

Connecticut Gen. Stat. (1939 Supp.) Sec. 1339e(b)(1) (B) and (C).

Delaware Laws (1947) (S. 78) Sec. 5 (c) (1) (A) and (D).

Florida Stat. Ann. Sec. 443.06 (2) (b) 2 and 3.

Georgia Code Ann., c. 54-610 (c) (2) (B) and (C).

Idaho Code Ann. Sec. 43-2409 (d) (2) and (3).

Illinois Stat. Ann. c. 45.134 (c) (2).

Indiana Laws (1947) Sec. 1502 (b).

Iowa Code (1946) Sec. 96.5-3 b (2) and (3).

Kansas Gen. Stat. Ann. c. 44-706 (c).

Kentucky Rev. Stat. Ann. Sec. 341.100 (2) (b) and (c).

Louisiana Gen. Stat. Ann. Sec. 4434.4 (c) (2) (b) and (c).

Maine Rev. Stat. (1944) c. 24 Sec. 5 (c) (2) (b) and (c).

Maryland Code Ann.—Art. 95A, Sec. 5 (d) (2) (b) and (c).

Massachusetts Ann. Laws, c. 151 A Sec. 25 (c) (2) and (3).

Michigan Stat. Ann. Sec. 17.531 (b).

Minnesota Stat. Ann. Sec. 268.09 (5) (b) (2) and (3).

Mississippi Code (1942) Sec. 7379 (d) (2) (B) and (C) as amended.

Missouri Rev. Stat. Ann. Sec. 9431 I (c) (2) (B) and (C).

Montana Rev. Code Ann. Sec. 3033.8 (c) (2) (b) and (c).

Nebraska Rev. Stat. Sec. 48-628 (c) (2) (ii) (iii).

Nevada Comp. Laws Ann. (1921-1941 Supp.) Sec. 2825.05 (c) (2) (b) and (c).

New Hampshire Revised Laws (1942) c. 218, Sec. 4 (C) (2) (b) and (c).

43 New Jersey Stat. Ann. Sec. 21-5 (c) (2) (b) and (c).

New Mexico Stat. Ann. Sec. 57-805 (c) (2) (b) and (c).

New York Stat. Ann. (McKinney), Labor Law Sec. 593-2 (a) and (d).

North Carolina Gen. Stat. Sec. 96-14 (c) (2) (b) and (c).

North Dakota Revised Code (1943) c. 52.0636—2 and 3.

Ohio Gen. Code Ann. Sec. 1345-6 e (1) and (4).

40 Oklahoma Stat. Ann. Sec. 215 (c) (2) (B) and (C).

Oregon Comp. Laws Ann. Sec. 126-705 (c) 2 (a) (B) and (C).

Pennsylvania—quoted *supra.*

Rhode Island General Laws (1938) c. 284, Sec. 7 (8) (b) and (c).

South Carolina Code of Laws (1942) Sec. 7035-85 (c) (2) (B) and (C).

South Dakota Code (1939) c. 17.0830 (3) (b) (2) and (3).

Tennessee Laws (1947) c. 29, Sec. 5 D (2) b and c.

Texas Civ. Stat. Ann. art. 5221 b-3 (c) (2) (b) and (c).

Utah Code Ann. (1943) Tit. 42-2a-5 (c) (2) (B) and (C).

Vermont Laws (1937) Public Act No. 1 Special Session December 1936, Sec. 5 (c) (2) II and III.

Virginia Code Ann. (1942) Sec. 1887 (97) (c) (2) (b) and (c).

Washington Sess. Laws (1945) c. 35, § 79, pp. 116-117.

West Virginia Code Ann. (1943) Sec. 2366 (80) (2) and (3).

Wisconsin Code (1945) c. 108.04 (9) (b) and (c).

Wyoming Comp. Stat. Ann. (1945) Sec. 54-105 A II (b) (ii) and (iii).

An interpretation of these standards, such as the one here made by the Supreme Court of Pennsylvania, which restricts the applicability of the standards, involves thus a question of fundamental public importance, as important as, if not more important than, the question involved in *Unemployment Compensation Comm.* v. *Aragon,* 329 U. S. 143, 145, 91 L. Ed. 143, 145 (Dec. 9, 1946), in which this Court took *certiorari* to determine the proper interpretation of a Section of the Alaska Unemployment Compensation Act involving the meaning of the term "labor dispute," for in that case the issue did not directly concern any Federal statutory standards.

So far as counsel for petitioner is aware, this Court has never passed on the interpretation to be given to the provisions here involved. As is pointed out in the petition for *certiorari, supra,* pp. 15-16, there is a wide split of authority among the states as to whether, under the circumstances of this case, petitioner was offered work which required him as a condition of being employed to resign from a *bona fide* labor organization.

Moreover, the question as to whether the work offered to petitioner was work which offered wages, working hours or other conditions of work substantially less favorable to the individual than those prevailing for similar work in the locality raises a further question of importance in the administration of the Act. Petitioner takes the position that in the record as made the decision of the Supreme Court of Pennsylvania substantially deprives the statutory safeguard of any meaning. Petitioner contends that there was insufficient evidence in the record for board or court to find that the work offered was of equivalent nature, that the burden of going forward with the evidence and of proving the lack of equivalence was placed on petitioner, and that to place such a burden on him, an unemployed individual;

i. e., to require him to prove the jobs were different, the localities not the same, the wages substantially lower than his own work and the like, was to render nugatory any protection supposedly given by the Act.

Cf. Morrison v. *California*, 291 U. S. 82 (1934).

III. Conclusion

For the foregoing reasons, it is respectfully submitted that this petition for a writ of *certiorari* should be granted.

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